UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE GEO GROUP, INC.

and Cases 28-CA-076869 28-CA-082747

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA) and its LOCAL NO. 827

and Case 28-CA-082651

JENNA AUSEMA

ORDER1

The Acting General Counsel's request for special permission to appeal

Administrative Law Judge Gerald A. Wacknov's October 31, 2012 postponement of the
hearing on the merits in this case, taking under advisement the settlement agreements
proposed by the parties, and declining to hear statements from alleged discriminatees

Douglas Long, Sofia Hines, and Jessica Gonzales is denied. The Acting General

Counsel has failed to establish that the judge abused his discretion, as set forth in

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In its opposition, the Respondent argues, inter alia, that the Board lacks a quorum because the President's recess appointments are constitutionally invalid. The Respondent renews these arguments in its February 11, 2013 motion to stay further proceedings in this case. We reject this argument. We recognize that the United States Court of Appeals for the District of Columbia Circuit has found that the President's recess appointments were not valid. See *Noel Canning v. NLRB*, ____ F.3d ____ (D.C. Cir. 2013). However, as the court itself acknowledged, its decision is in conflict with at least three other courts of appeals. *See Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied, 544 U.S. 942 (2005); *United States v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *United States v. Allocco*, 305 F.2d 704 (2d Cir. 1962). This question remains in litigation, and until such time as it is ultimately resolved, the Board is charged to fulfill its responsibilities under the Act.

Section 102.35(6) and (7) of the Board's Rules and Regulations, by postponing the hearing in order to permit additional events to unfold.²

Dated, Washington, D.C., February 26, 2013.

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

SHARON BLOCK, MEMBER

² We share the Acting General Counsel's concern over the potential for a significant delay in this proceeding. We anticipate, however, that the parties will make their best efforts to resolve the pending matters as soon as possible. Last, given our denial of the Acting General Counsel's motion, we deny as moot the Respondent's motion to strike affidavits attached to the Acting General Counsel's appeal.